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PATENTS

Navy Case No. 82,627

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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In re application of :
Louis F. Aprigliano et al. :
Serial No. 09/656,017 : Group Art Unit: 1722
Filed: Sept. 7, 2000 : Examiner: K. Lin
For: METHOD OF PRODUCING CORROSION : CONFIRMATION NO. 2288
RESISTANT METAL ALLOYS WITH :
IMPROVED STRENGTH AND DUCTILITY :

RESPONSE TO EXAMINER'S COMMUNICATION

Commissioner for Patents
Washington, D.C. 20231

Sir:

Noted
4/2/03
Following the filing of a Reply Brief on Feb. 4, 2003, an Examiner's Communication dated March 19, 2003 was received, indicating: "The reply brief--had been considered by the Examiner--the claimed invention is deemed to be unpatentable--for the same reasons as set forth in the final rejection--".

The Examiner's latter quoted statement involves a factually erroneous basis for supporting that rejection of the claimed invention subject to appeal, as hereinafter pointed out.

1. It must be assumed that the claimed invention subject to this appeal is covered by and/or defined by claims 5, 6 and 9 as amended under Rule 116 after the Final Office action dated July 30, 2002, as indicated in the Examiner's Advisory Action dated Sept. 27, 2002.

2. The reasons set forth in the Final Office action in support of the rejection of claims 5, 6 and 9 omit any reference to certain critical claim limitations involving: (a) increase in yield strength, (b) improvement in ductility, and (c) percentage of corrosion-resisting material in the ductile alloy as pointed out in the Reply Brief.

3. The latter referred to omission of rejection supporting reasons in the Final Office action to support the final rejection of claims 5, 6 and 9 under appeal is further evidenced in the Examiner's Advisory Action dated Sept. 27, 2002 wherein it is conjectured for the first time after the Final Office action that in regard to the prior art references relied on, "--strength of the cast alloy--modified process--also increase as claimed alloy does--".

In view of the foregoing referred to record in this application, the issues to be considered in this appeal should be limited as pointed out in the Reply Brief, to the exclusion of the Examiner's conjectural statements submitted after the Final Office action, since applicants' request of record for reopening of prosecution was denied.

Respectfully submitted,



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